

### **REMARKS**

At the time the Official Action was mailed, claims 1, 3-10 and 16-38 were pending. All pending claims were rejected. Reconsideration of the application is respectfully requested.

### **Interview Summary**

In an Interview conducted between the undersigned, Robert A. Manware, and the Supervisory Examiner, Mano Padmanabhan, on December 29, 2004, Applicants noted that in the Response to the Notice to File Missing parts submitted by Applicants on February 12, 2004, the serial number for the parent application (09/769,716), which issued on October 28, 2003 as U.S. Pat. No. 6,640,282, was inadvertently used to designate the instant application. However, Examiner Padmanabhan confirmed that the improper designation was ignored and that the Response to the Notice to File Missing parts was correctly entered for the instant application (10/634,576). Accordingly, everything should be properly included in the prosecution history of the instant application.

Further, Examiner Padmanabhan was unable to ascertain as to why the present file is designated as an RCE in the instant application, rather than a continuation. A discussion of this matter has been introduced below, as suggested by Examiner Padmanabhan. Applicants would like to thank Examiner Padmanabhan for her time and direction.

### **Improper Designation of Application by PTO**

As a preliminary matter, Applicants would like to direct the Examiner's attention to the following misstatement included on page 2 of the office action:

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 5 August 2003 has been entered.

Applicants respectfully direct the Examiner's attention to the submission filed on August 5, 2003. Contrary to the statements above, a request for continued examination under 37 C.F.R. §1.114 *was not* submitted. Instead, a request for a continuing application under 37 C.F.R. §1.53(b) was submitted along with the appropriate fees. For the Examiner's convenience, a copy of the originally submitted request for a continuing application under 37 C.F.R. §1.53(b) is attached hereto as appendix "A." Applicant's respectfully request confirmation of the granting of the request for a continuing application under 37 C.F.R. §1.53(b) and request that the record be corrected to reflect such a designation.

### **Double Patenting**

The Examiner rejected claims 1, 3-5, 9 and 10 of the instant application under nonstatutory double patenting based on claims 2-5, 8 and 9 of U.S. Patent No. 6,640,282 which is the parent of the instant application. Further, the Examiner rejected claim 6 of the instant application under 35 U.S.C. §101 for statutory type double patenting as claiming the same invention as that of claim 5 of U.S. Patent No. 6,640,282.

It would appear that the Examiner did not consider the amendments made with the Response and Preliminary Amendment filed along with the request for continuing application under 37 CFR 1.53(b) on August 5, 2003. For the Examiner's convenience, Applicants have attached the previously filed Response and Preliminary Amendment as appendix "B."

Applicants respectfully submit that entry of the claim amendments introduced in the Response and Preliminary Amendment will render the double patenting rejections moot. Accordingly, Applicants respectfully request entry of the previously submitted amendments and withdrawal of the double patenting rejections.

### **Rejections under 35 U.S.C. §103**

As noted above, it appears that the Examiner failed to enter the amendments submitted in the Response and Preliminary Amendment filed on August 5, 2003 and attached hereto as appendix "B." Applicants respectfully submit that upon entry of the previously submitted amendments and upon consideration of the previously submitted remarks, that the present rejections under 35 U.S.C. §103 will be rendered moot.

In summary, Applicants respectfully submit that neither the Olarig et al. reference nor the Santeler et al. reference qualifies as prior art against the above-referenced application under 35 U.S.C. § 103. In accordance with 35 U.S.C. § 103(c) and Pub.L. 106-113, § 4807 enacted November 29, 1999, subject developed by another person which qualifies as prior art only under subsection (e) of 35 U.S.C. § 102, shall not preclude patentability where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Here, both the Olarig et al. reference and the claimed invention were, at the time the invention was made, owned by the present assignee (Compaq Computer Corporation) or subject to an obligation of assignment to the present assignee. Since the present application was filed after November 29, 1999 and since the Olarig et al. reference did not issue until after the priority filing date of the present application, it is clear that the Olarig et al. reference

does not qualify as prior art under 35 U.S.C. § 102(e)/103(c). Similarly, both the Santeler et al. reference and the claimed invention were, at the time the invention was made, owned by the present assignee (Compaq Computer Corporation) or subject to an obligation of assignment to the present assignee. Since the Santeler et al. reference did not issue until after the filing date of the present application, it is clear that the Santeler et al. reference does not qualify as prior art under 35 U.S.C. § 102(e)/103(c).

Without the Olarig et al. and Santeler et al. references, all of the Examiner's rejections under 35 U.S.C. § 103 are moot, since it is clear that none of the art of record and available as prior art either alone or in combination, discloses or suggests all of the elements recited in the present claims. Accordingly, Applicants respectfully request withdrawal of the Examiner's rejections and allowance of claims 3-10 and 16-38.

### **Conclusion**

In view of the remarks and amendments set forth above, Applicants believe the claims to be patentable over the art of record and respectfully request allowance of claims 1, 3-10 and 16-38.

If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. A. Manware', written over a horizontal line.

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